IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIERRA RANDLE, LINDA TAYLOR, ELIAS MORALES, GENOA TRIGGS, and MARQUISHA JERRY	§	
	§	Case No. 4:17-cv-1542
Plaintiffs,	§	
v.	§	COMPLAINT AND DEMAND FOR JURY TRIAL
CAREER ADVISING CENTER	§	
Defendant.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, TIERRA RANDLE, LINDA TAYLOR, ELIAS MORALES, GENOA TRIGGS and MARQUISHA JERRY, ("Plaintiffs"), bring this action against Defendant CAREER ADVISING CENTER. ("Defendant" or "Career Advising Center") to stop Defendant's practice of aggressive and illegal calls to the cellular telephone of Plaintiffs, and to obtain redress for injuries from Defendant's conduct. Each Plaintiff alleges the conduct and acts of others upon information and belief only, including investigation conducted by counsel.

INTRODUCTION

1. Plaintiffs bring this action, as shown in their respective allegations, pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), Chapter 302 of the TEX. BUS. & COM. CODE - the Regulation of Telephone Solicitation statute in Texas ("Texas TCPA"), and TEXAS DECEPTIVE TRADE PRACTICES ACT ("DTPA").

2. Defendant is a major, nationwide telemarketing company that engages in reckless and aggressive calling practices in derogation of controlling federal and state statutes and the rights of the called parties.

3. Defendant repeatedly made unsolicited calls to Plaintiffs' cellular telephones in violation of the TCPA. Defendant made the calls in each case without valid authority, using an Automatic Telephone Dialing System ("ATDS") or pre-recorded voice. Defendant continued to make these illegal calls after each respective Plaintiff stated she did not wish to be called again.

4. Defendant's conduct violates the TCPA. Plaintiffs are entitled to actual damages, attorneys' fees, costs of court, expert fees, deposition costs, and treble damages for each and every such knowing violation.

PARTIES

5. Plaintiff Tierra Randle is a natural person and a resident of Houston, TX

6. Plaintiff Linda Taylor is a natural person and a resident of Denton, TX.

7. Plaintiff Elias Morales is a natural person and a resident of Sacramento, CA.

8. Plaintiff Genoa Triggs is a natural person and a resident of Philadelphia, PA.

9. Plaintiff Marquisha Jerry is a natural person and a resident of Philadelphia, PA.

10. Defendant is a corporation organized under the laws of the State of New York. Defendant maintains its principal office in Nanuet, New York, and may be served with process at 119 Rockland Center, Suite 69, Nanuet, NY 10954.

11. All allegations herein of acts or omissions by a Defendant include, but are not limited to, acts and omissions of such Defendant's officers, directors, operators, managers, supervisors, employees, affiliates, subsidiaries, vice-principals, partners, agents, servants, and owners; and that such acts and omissions were committed or made with express and/or implied authority of the Defendant, or were ratified or otherwise approved by the same Defendant; or otherwise that such acts or omissions were made in the routine, normal course of the actor's employment or agency, and within the scope of the agency or employment, as the case may be.

JURISDICTION & VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, a federal statute.

13. The Court has personal jurisdiction over Defendant because it conducts significant business in this District, and the unlawful conduct alleged in this Complaint occurred in, was directed to, and/or emanated from this District. Furthermore, the exercise of personal jurisdiction over Defendant in this District does not offend traditional notions of fair play or substantial justice. For these same reasons, venue is proper in this District.

LEGAL BASIS FOR THE CLAIMS

The TCPA

14. Congress enacted the TCPA in 1991 to address certain practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA and the Federal Communications Commission's ("FCC") implemented rules prohibit: (1) making telemarketing calls using an artificial or pre-recorded voice to residential telephones without prior express consent; and (2) making any non-emergency call using an ATDS or an artificial or pre-recorded voice to a wireless telephone number without prior express consent. If the call includes or introduces an advertisement, or constitutes telemarketing, consent must be in writing.[1] Calls that include non-marketing messages require consent, but not written consent. The TCPA grants consumers a private right of action, with a provision for $500 or the actual monetary loss in damages for each violation, whichever is greater, and treble damages for each willful or knowing violation, as well as injunctive relief.

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[1] Prior express written consent means "an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or pre-recorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered." 47 C.F.R. § 64.1200(f)(8).

15. Since the TCPA's passage in 1991, the FCC has taken multiple actions implementing and interpreting the TCPA, and has issued numerous Declaratory Rulings clarifying specific aspects of the TCPA. The most recent, FCC Omnibus Order of July 10, 2015, (the "Order") provided further protection to consumers by, among other things, clarifying that ATDS is broadly defined, confirming liability attaches to calls made to the wrong number or reassigned number, and clarifying consumers may revoke consent through reasonable methods. *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, FCC 15–72, 30 F.C.C.R. 7961, (July 10, 2015), available at https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order. The Order defines an "autodialer" as equipment/software that has the future capacity to dial randomly or sequentially. "In other words, the capacity of an autodialer is not limited to its current configuration but also includes its potential functionalities." The Order clarifies the meaning of "capacity" and that "any call" made using a device with the capacity to serve as an ATDS requires consent under the TCPA, even if the caller is not "actually…using those functionalities to place calls" at the time. *Derby v. AOL, Inc.*, No. 5:15-CV-00452-RMW, 2015 WL 5316403, at *3 (N.D. Cal. Sept. 11, 2015).

16. The Order also states that calls placed to the wrong number or a reassigned number are made with knowledge of the error after the first call; and consumers may revoke consent through any reasonable method, including orally: "[w]e clarify, however, that callers who make calls without knowledge of reassignment and with a reasonable basis to believe that they have valid consent to make the call should be able to initiate one call after reassignment as an additional opportunity to gain actual or constructive knowledge of the reassignment and cease future calls to the new subscriber. If this one additional call does not yield actual knowledge of reassignment, we deem the caller to have constructive knowledge of such;" "[c]onsumers generally may revoke,

for example, by way of a consumer-initiated call, directly in response to a call initiated or made by a caller, or at an in-store bill payment location, among other possibilities."

17. Furthermore, the TCPA established the National Do-Not-Call List, and also mandates all businesses that place calls for marketing purposes maintain an "internal" do-not-call list ("IDNC"). *See* 47 C.F.R. § 64.1200(d). The IDNC is "a list of persons who request not to receive telemarketing calls made by or on behalf of that [seller]." *Id.* The TCPA prohibits a company from calling individuals on its IDNC list or on the IDNC list of a seller on whose behalf the telemarketer calls, even if those individuals' phone numbers are not on the National Do-Not-Call Registry. *Id.* at § 64.1200(d)(3), (6). Any company, or someone on the company's behalf, who calls a member of the company IDNC is liable to that person under the TCPA. The called party is then entitled to bring a private action under the TCPA for monetary and injunctive relief.

18. Finally, in 2008, the FCC held that "a creditor on whose behalf an autodialed or pre-recorded message call is made to a wireless number bears the responsibility for any violation of the Commission's rules." In re Rules and Regulations Implementing the Telephone Consumer Protection Act, Declaratory Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559, 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, 2012 WL 7062748 (Dec. 31, 2012).

19. Accordingly, the entity can be liable under the TCPA for a call made on its behalf, even if the entity did not directly place the call. Under those circumstances, the entity is deemed to have initiated the call through the person or entity.

The Texas TCPA & DTPA

20. Enacted in 1978, Chapter 302 of the TEX. BUS. & COM. CODE is the Regulation of Telephone Solicitation statute in Texas ("Texas TCPA"). A violation of the Texas TCPA is also a violation of the TEXAS DECEPTIVE TRADE PRACTICES ACT ("DTPA") by law:

> (a) A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17 (DTPA).
>
> (b) A public or private right or remedy prescribed by Subchapter E, Chapter 17 (DTPA), may be used to enforce this chapter.

TEX. BUS. & COM. CODE § 302.303; *see also* TEX. BUS. & COM. CODE § 17.50(h) (a plaintiff can maintain a DTPA suit based on the violation of other consumer-protection statutes that have been incorporated into the DTPA). The Texas TCPA shall be liberally construed and applied to promote its underlying purpose to protect persons against false, misleading, or deceptive practices in the telephone solicitation business. TEX. BUS. & COM. CODE § 302.003.

21. The Texas TCPA also provides much harsher civil penalties than the federal TCPA:

> (a) A person who violates this chapter is subject to a civil penalty of not more than **$5,000 for each violation.**
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> ...
>
> (d) The party bringing the action also is entitled to recover **all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.**

TEX. BUS. & COM. CODE § 302.302 (emphasis added). The plaintiff can recover additional damages of **up to three times the amount of economic and mental anguish damages** for a DTPA claim. TEX. BUS. & COM. CODE § 17.50(b)(1) (emphasis added). Economic damages can be trebled if the defendant knowingly or intentionally violated the DTPA. *Id.*; *Bossier Chrysler-Dodge II, Inc. v. Riley*, 221 S.W.3d 749, 759 (Tex. App.–Waco 2007, pet denied). Mental-anguish damages can be trebled if the defendant acted intentionally. TEX. BUS. & COM. CODE § 17.50(b)(1).

FACTS APPLICABLE TO ALL PLAINTIFFS

22. Defendant's telemarketing campaign is a continuous course of conduct and a pattern of practice, conducted under a common policy or program. From at least 2015 and through 2016, Defendant engaged in an aggressive telemarketing campaign ("Campaign") that targeted people across the nation. Plaintiffs were directly targeted by Defendant's Campaign.

23. Although Plaintiffs may live in different states, they share similar factual bases for Defendant's liability – marketing pitch; lack of consent; use of an auto-dialer; targeting a cell phone; and loss of privacy, among others, all of which arise out of Defendant's Campaign.

JOINDER

24. Rule 20 of the Federal Rules of Civil Procedure provides, in part: (a) PERSONS WHO MAY JOIN OR BE JOINED.

25. (1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action. *See* Fed. R. Civ. P. 20(a).is Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute.

26. "Under the [Federal] Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *See United Mineworkers of Am. V. Gibbs*, 383 U.S. 715, 724, 86 S. Ct. 1130, 1138 (1966).

27. Rule 20 is "designed to permit the joinder of plaintiffs or defendants whenever there

is a common question of law or fact and the right to relief arises out of a single transaction or occurrence or a series of transactions or occurrences." *Walker v. City of Houston*, 341 F. Supp. 1124, 1132 (S.D. Tex. 1971).

28. A 'series of transactions or occurrences,' means some connection or logical relationship between various transactions or occurrences such as a 'nucleus of operative facts or law.' *Breidel v. Harris Cnty. Sheriff's Ofc*., 2014 U.S. Dist. LEXIS 108542, *9 (S.D. Tex. Aug. 6, 2014); quoting *Hanley v. First Investors Corp*., 151 F.R.D. 76, 79 (E.D. Tex. 1993). "Rule 20 is intended to be liberally construed in order to promote trial convenience." *Breidel*, 2014 U.S. *Dist. LEXIS, at *9; citing Walker*, 341 F. Supp., at 1132.

29. "The common question need not predominate; that's a requirement for class actions; not for permissive joinder." *See Lee v. Cook County*, 635 F.3d 969, 971 (7th Cir. 2011); *Fidelity Nat'l Title Co. v. U.S. Small Bus. Admin.*, 2014 U.S. Dist. LEXIS 65380, *25 (E.D. Cal. May 12, 2014).

30. Allegations of a "company-wide policy" that violates federal law have been held sufficient to establish that multiple plaintiffs' claims "arise out of the same series of transactions or occurrences." *See, e.g., Afabor v. RaceTrac Petroleum, Inc.*, 2006 U.S. Dist. LEXIS 33045, *11 (N.D. Tex. May 15, 2006); *citing King v. Ralston Purina Co*., 97 F.R.D. 477 (W.D.N.C. 1983) ("Common sense says that claims alleged to be part of a 'pattern and practice' satisfy both the 'transaction' and the 'common question' requisites of Rule 20(a).").

ALLEGATIONS OF FACT COMMON TO ALL PLAINTIFFS

31. Career Advising Center used a predictive dialer system for all Plaintiffs.

32. Before Career Advising Center began contacting each Plaintiff, it and each Plaintiff had no prior business relationship and each Plaintiff never provided express consent to Career Advising Center to be contacted on his/her cellular telephone.

33. Career Advising Center regularly uses instrumentalities of interstate commerce and the mails to effect its harassing calls.

34. The principal source of Career Advising Center's revenue is related to telemarketing.

35. As described, infra, Career Advising Center contacted each Plaintiff for telemarketing purposes.

36. Within the past twelve (12) months, Career Advising Center called each Plaintiff on multiple occasions in connection with telemarketing. On several occasions, within the past forty-eight (48) months, the dates of which will be discovered through discovery, Career Advising Center willingly and knowingly used an automatic telephone dialing system (ATDS) to call Plaintiffs on their cellular phones multiple times in violation of the TCPA.

37. Each Plaintiff, on at least one occasion, communicated his or her desire that Career Advising Center cease calling him or her.

38. Notwithstanding these communications, Career Advising Center continued to call each Plaintiff for telemarketing.

39. Career Advising Center's policy and practice does not adequately address, or plainly disregards consumer's express desire to stop receiving its telemarketing calls, and each Plaintiff in this case has been harmed by this policy and practice.

40. Career Advising Center's policies and procedures for processing account data received from third party data firms fail to properly identify apparent errors and avoid the needless harassment of consumers such as Plaintiffs.

LEGAL ARGUMENTS COMMON TO ALL PLAINTIFFS

41. The TCPA (at 47 U.S.C. § 227(b)(3) provides, in part:

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

42. The Communications Act of 1943, of which the TCPA is a part, defines "willful" as "the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision[], rule or regulation...." 47 U.S.C. § 312(f).

43. In order to establish a "willful" or "knowing" violation of the TCPA, a plaintiff need not demonstrate that the defendant intended to violate the statute, or that it knew or should have known it was violating the statute. *See Roylance v. ALG Real Est. Servs., Inc*. 2015 U.S. Dist. LEXIS 44930, *31 (N.D. Cal. Mar. 16, 2015); *Bridgeview Health Care Ctr. Ltd. v. Clark*, 2013 U.S. Dist. LEXIS 37310, *21-22 (N.D. Ill. Mar. 19, 2013); *Steward v. Regent Asset Mgmt. Solutions, Inc*., 2011 U.S. Dist. LEXIS 50046, *18-20 (N.D. Ga. 2011).

44. Instead, a plaintiff need only show that the defendant engaged in a "voluntary act" that violated the TCPA. *See Bridgeview*, 2013 U.S. Dist. LEXIS, at *21-22; *see also Roylance*, 2015 U.S. Dist. LEXIS, at *31 (intentionally making phone calls that violated TCPA, without intent to violate the statute, was sufficient to warrant treble damages).

ADDITIONAL FACTORS SUPPORTING JOINDER

45. The witness(es) that Career Advising Center will produce in response to a notice of deposition pursuant to Rule 30(b)(6) will likely be the same individual(s) for each Plaintiff.

46. The information that Career Advising Center will provide in response to interrogatories related to Career Advising Center's policies, practices, and procedures will likely be the same, or substantially similar, for each Plaintiff.

47. The evidence that Career Advising Center will produce in response to requests for production of documents related to Career Advising Center's policies, practices and procedures will likely be the same, or substantially overlap across the several Plaintiffs.

48. Joinder will allow a single trier of fact to assess the pattern and frequency of Career Advising Center's alleged misconduct, which is a relevant factor in the legal issues and damages in this case.

49. Joinder avoids the need to conduct multiple trials and empanel multiple juries to resolve each Plaintiffs' fairly straightforward claim that Career Advising Center violated the TCPA or any other asserted statute.

FACTS SPECIFIC TO EACH PLAINTIFF – TIERRA RANDLE

50. Between and around from January 2017 to March 2017, Plaintiff Randle received at least 5 calls on her mobile telephone with number ending -0649, from Defendant.

51. Randle is the regular carrier and exclusive user of the cellular telephone assigned the number ending in -0649.

52. Defendant and/or third parties on Defendant's behalf, placed all the calls described above using an ATDS, as defined by 47 U.S.C. § 227(a)(1). Each call, when answered, was preceded by a pause or "dead air" before a pre-recorded voice came online.

53. On information and belief, Defendant's ATDS called Randle on every occasion.

54. Randle felt the calls were an invasion of her privacy and, as she told Defendant, wanted the calls to stop. Defendant's representative asked for a person not Randle or the regular carrier or exclusive user of the telephone with number ending -0649. Randle repeatedly told Defendant to stop calling and, at some point, threatened to call the police to report the abuse.

55. Randle's -0649 number is assigned to a cellular telephone service for which she loses minutes she paid for under 47 U.S.C. § 227(b)(1).

56. Defendant's calls were not for emergency purposes under 47 U.S.C. § 227(b)(1(A)(i).

57. All calls Defendant made to Randle violate 47 U.S.C. § 227.

FACTS SPECIFIC TO EACH PLAINTIFF – LINDA TAYLOR

58. Between and around July 2014, Plaintiff Taylor received more than 2 calls on her mobile telephone with number ending -6940, from Defendant.

59. Taylor is the regular carrier and exclusive user of the cellular telephone assigned the number ending in -6940.

60. Defendant and/or third parties on Defendant's behalf, placed all the calls described above using an ATDS, as defined by 47 U.S.C. § 227(a)(1). Each call, when answered, was preceded by a pause or "dead air" before a pre-recorded voice came online.

61. On information and belief, Defendant's ATDS called Taylor on every occasion.

62. Taylor felt the calls were an invasion of her privacy and, as she told Defendant, wanted the calls to stop. To the extent Defendant had any consent to call Taylor, she revoked such consent at least twice, but Defendant continued to call her.

63. Taylor's -6940 number is assigned to a cellular telephone service for which she loses minutes she paid for under 47 U.S.C. § 227(b)(1).

64. Defendant's calls were not for emergency purposes under 47 U.S.C. § 227(b)(1(A)(i).

65. All calls Defendant made to Taylor violate 47 U.S.C. § 227.

FACTS SPECIFIC TO EACH PLAINTIFF – ELIAS MORALES

66. From July 2015 through at least September 2015, Plaintiff Morales received at least 6 calls on her mobile telephone with number ending -5600, from Defendant.

67. Morales is the regular carrier and exclusive user of the cellular telephone assigned the number ending in -5600.

68. Defendant and/or third parties on Defendant's behalf, placed all the calls described above using an ATDS, as defined by 47 U.S.C. § 227(a)(1). The calls involved pre-recorded or artificial voice.

69. On information and belief, Defendant's ATDS called Morales on every occasion.

70. Morales felt the calls were an invasion of her privacy and wanted the calls to stop. To the extent Morales gave any consent to be called on his mobile phone, he revoked such consent, but Defendant continued to call him.

71. Morales's -5600 number is assigned to a cellular telephone service for which he loses minutes he paid for under 47 U.S.C. § 227(b)(1).

72. Defendant's calls were not for emergency purposes under 47 U.S.C. § 227(b)(1(A)(i).

73. All calls Defendant made to Morales violate 47 U.S.C. § 227.

FACTS SPECIFIC TO EACH PLAINTIFF – GENOA TRIGGS

74. Between and around November 2015 through December 2015, Plaintiff Triggs received at least 14 calls on her mobile telephone with number ending –8085, from 267-293-9900, a number associated with Defendant.

75. Triggs is the regular carrier and exclusive user of the cellular telephone assigned the number ending in -8085.

76. Defendant and/or third parties on Defendant's behalf, placed all the calls described above using an ATDS, as defined by 47 U.S.C. § 227(a)(1). Each call, when answered, was preceded by a pause or "dead air" before a live representative came online to initiate conversation. The calls involved pre-recorded or artificial voice, and continued in spite of Triggs' request to stop (indicating a computerized or automatic dialing program).

77. On information and belief, Defendant's ATDS called Triggs on every occasion.

78. Defendant's representative asked for a person not Triggs or the regular carrier and exclusive user of the cellular phone with number ending -8085.

79. Triggs felt the calls were an invasion of her privacy and, as she told Defendant, wanted the calls to stop. Defendant called Triggs repeatedly without diligently ensuring that the debt it sought to collect was owed by Triggs.

80. Triggs' -8085 number is assigned to a cellular telephone service for which she loses minutes she paid for under 47 U.S.C. § 227(b)(1).

81. Defendant's calls were not for emergency purposes under 47 U.S.C. § 227(b)(1(A)(i).

82. All calls Defendant made to Triggs violate 47 U.S.C. § 227.

FACTS SPECIFIC TO EACH PLAINTIFF – MARQUISHA JERRY

83. Around November 2015, Plaintiff Jerry received at least 9 calls on her mobile telephone with number ending -3882, from Defendant.

84. Jerry is the regular carrier and exclusive user of the cellular telephone assigned the number ending in -3882.

85. Defendant and/or third parties on Defendant's behalf, placed all the calls described above using an ATDS, as defined by 47 U.S.C. § 227(a)(1). Each call, when answered, was preceded by a pause or "dead air" before a pre-recorded voice came online.

86. On information and belief, Defendant's ATDS called Jerry on every occasion.

87. Jerry felt the calls were an invasion of her privacy and, as she told Defendant, wanted the calls to stop. To the extent Defendant had any consent to call Jerry, she revoked such consent at least twice, but Defendant continued to call her.

88. Jerry's -4660 number is assigned to a cellular telephone service for which she loses minutes she paid for under 47 U.S.C. § 227(b)(1).

89. Defendant's calls were not for emergency purposes under 47 U.S.C. § 227(b)(1(A)(i).

90. All calls Defendant made to Jerry violate 47 U.S.C. § 227.

FIRST CAUSE OF ACTION
(VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,
47 U.S.C. § 227 *ET SEQ.*)

91. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

92. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227, *et seq*. and 47 C.F.R. § 64.1200, *et seq.*

93. As a result of Defendant's violations of 47 U.S.C. § 227, *et seq*., and 47 C.F.R. §64.1200, *et seq.*, Plaintiffs are entitled to an award of $500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

94. Plaintiffs are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
(KNOWING AND/OR WILLFUL VIOLATION OF
THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227 *ET SEQ.*)

95. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

96. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227, *et seq*. and 47 C.F.R. §64.1200, *et seq*.

97. As a result of Defendant's violations of 47 U.S.C. § 227, *et seq*., and 47 C.F.R. §64.1200, *et seq*. Plaintiffs are entitled to an award of $1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

98. Plaintiffs are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION
PLAINTIFFS RANDLE AND TAYLOR
(VIOLATION OF THE TEXAS REGULATION OF TELEPHONE SOLICITATIONS
Chapter 302 of the TEX. BUS. & COM. CODE)

99. Plaintiffs hereby incorporate by reference and re-allege each an d every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

100. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the Texas TCPA, including but not limited to each and every one of the provisions of Chapter 302 of the TEX. BUS. & COM. CODE.

101. As a result of Defendant's violations of the Texas TCPA, Plaintiffs are entitled to an award of statutory damages in the amount of $5,000, for each and every violation, and actual damages including mental anguish, all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

FOURTH CAUSE OF ACTION
PLAINTIFFS RANDLE AND TAYLOR
(VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT
Chapter 17 of the TEX. BUS. & COM. CODE)

102. Plaintiffs hereby incorporates by reference and re-alleges each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

103. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the Texas TCPA, which automatically results in a violation of the DTPA.

104. A violation of the Texas TCPA is also a violation of the TEXAS DECEPTIVE TRADE PRACTICES ACT ("DTPA") by law:

> "(a) A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17 (DTPA).
>
> (b) A public or private right or remedy prescribed by Subchapter E, Chapter 17 (DTPA), may be used to enforce this chapter."

TEX. BUS. & COM. CODE § 302.303; *see also* TEX. BUS. & COM. CODE § 17.50(h) (a plaintiff can maintain a DTPA suit based on the violation of other consumer-protection statutes that have been incorporated into the DTPA).

105. As a result of Defendant's violations of the DTPA, Plaintiffs are entitled to an award of actual damages, treble damages for the Texas TCPA violations ($15,000 per violation), costs of court, and attorney's fees.

JURY DEMAND

106. Plaintiffs demand a jury trial on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- An award of $500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227, *et seq.*;

- An award of $1,500.00 in statutory damages, for each and every willful and/or knowing violation, pursuant to 47 U.S.C. § 227, *et seq*.;
- An award of $5,000.00 in statutory damages, for each and every violation, pursuant to Chapter 302 of the Texas Business & Commerce Code, *et seq*.;
- Actual damages, including mental anguish;
- An award of $15,000.00 in statutory damages, for each and every violation, pursuant to Chapter 17 of the Texas Business & Commerce Code, *et seq*.;
- Actual damages, including mental anguish; and
- Preliminary and permanent injunctive relief enjoining Defendant, its agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unlawful calls made with automated dialing systems to cellular phones, and enjoining Defendant from engaging in abusive and oppressive telemarketing practices as outlined in this Complaint.

Dated: May 19, 2017

Respectfully submitted,

/s/ Jarrett L. Ellzey

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